IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

CRL.A.No. 39 of 1999()

CC.275/1995 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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APPELLANT/COMPLAINANT:

CAPTAIN K.M.DHARMARAJAN,
MANAGER, CO-ORDINATOR, M/S.MANAPPURAM GENERAL FINANCE AND LEASING LTD.
NAIKKANAL, TRICHUR.

BY ADV. SRI.ANIL THOMAS (MELEMALAYIL)
SMT.K.V.RASHMI

RESPONDENTS/RESPONDENTS:

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1. ASHA SREENIVASAN, PROPRIETRIX,
M/S.SREESHA AUTO SERVICE,
POZHUVIL.P.O., TRICHUR.

2. THE STATE OF KERALA, REP; BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY P.P.SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

CRL.APPEAL No.39 of 1999

Dated this the 6th day of December, 2006

Judgment

Appellant is the Manager of a financing company. A hire purchase agreement was entered into between the petitioner and first respondent for purchase of a vehicle. The hire purchase agreement is dated 18.10.1993. At the time of the agreement, a blank cheque was issued as security for the transaction. Ext.P1 is the cheque. It is dated 26.6.1995 and when it was presented, it was dishonoured for insufficiency of funds. Hence, he filed a complaint. The complaint was dismissed and accused was acquitted on the ground that a blank cheque was issued on 18.10.1993. At that time, there was no liability. Therefore, at the time of issuance of the cheque there was no legally enforceable liability and the cheque was issued only as a security. According to the accused, balance to be was only Rs.109.12 and he has paid various instalments. But, the cheque was filled up for the entire amount and presented.

The Apex Court in M.S.Narayana Menon @ Mani v. State of Kerala and another ((2006) 6 SCC 39) held that a

complaint under section 138 of the Negotiable Instruments Act will not lie if the cheque is issued only as a security for the amount and at the time of issuance of the cheque there is no legally enforceable liability. If a possible view is taken by the trial court, the appellate court should not interfere in the same. Here, a possible view has been taken. Hence, there is no merit in the case.

It is also submitted that a civil case was filed. I make it clear that the judgment in this case will not affect the civil case which has to be decided according to law.

Appeal is dismissed.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL No.39/99

Judgment

Dated:6th December, 2006